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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 NATIONAL PRODUCTS INC.,
12 Plaintiff,

13 v.

14 DANA INNOVATIONS, INC. d/b/a
15 SONANCE AND iPORT,
16 Defendant.

Case No. 8:24-cv-2499-JWH (JDEx)

PROTECTIVE ORDER

[Note Changes by the Court]

17 Based on the parties' Stipulation and the record in this action, and for good
18 cause shown, the Court finds and orders as follows.

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from
22 public disclosure and from use for any purpose other than this litigation may be
23 warranted. This Order does not confer blanket protection on all disclosures or
24 responses to discovery, does not alter the provision of Local Rule 79-5, et seq., and
25 the protection it affords from public disclosure and use extends only to the limited
26 information or items that are entitled to confidential treatment under applicable
27 legal principles. Designation of material under this Order does not, of itself, entitle
28 parties to file information under seal.

2. “CONFIDENTIAL” AND “ATTORNEYS’ EYES ONLY” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- (a) sensitive technical information relating to research, development, marketing, manufacture, and production of products; and
- (b) sensitive technical, business, and research information regarding the Parties’ respective products.

“Attorneys’ Eyes Only” material shall include the following documents and tangible things produced or otherwise exchanged that a party deems proprietary business information including:

- (a) highly sensitive or competitive financial, customer, or marketing information, including, but not limited to, marketing plans and forecasts, customer lists, pricing data, cost data, customer orders, and customer quotations;
- (b) research, development, marketing, manufacture, and production of products; and
- (c) strategies, trade secrets, research, marketing, production, and costs information.

3. SCOPE

The protections conferred by this Order cover not only Confidential material and Attorneys’ Eyes Only material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this Order do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise, known to such Receiving Party or known to have been independently developed by such Receiving Party prior to its production herein or without use or benefit of the

1 information, obtained outside of this action by such Receiving Party from the
2 Producing Party without having been designated “Confidential” or “Attorneys’
3 Eyes Only” provided, however, that this provision does not negate any pre-existing
4 obligation of confidentiality, obtained by such Receiving Party after the time of
5 disclosure hereunder from a non-party having the right to disclose the same, and
6 previously produced, disclosed, and/or provided by the Producing Party to the
7 Receiving Party or any non-party without an obligation of confidentiality.

8 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9 4.1 Basic Principles. A receiving party may use Confidential material and
10 Attorneys’ Eyes Only material that is disclosed or produced by another party or by
11 a non-party in this case only for prosecuting, defending, or attempting to settle this
12 litigation. Confidential material and Attorneys’ Eyes Only material may be
13 disclosed only to the categories of persons and under the conditions described in
14 this Order. Confidential material and Attorneys’ Eyes Only material must be stored
15 and maintained by a receiving party at a location and in a secure manner that
16 ensures that access is limited to the persons authorized under this Order.

17 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the designating party, a
19 receiving party may disclose any confidential material only to:

- 20 (a) the receiving party’s counsel of record in this action, as well as
21 employees of counsel to whom it is reasonably necessary to
22 disclose the information for this litigation;
- 23 (b) the following officers, directors, employees (including in house
24 counsel), or outside counsel of the receiving party to whom
25 disclosure is reasonably necessary for this litigation who have
26 signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A), and their respective clerical, and paralegal personnel:
28

National Products Inc.:

1. Jeff Carnevali
2. Chad Remmers
3. Jake Parker

Dana Innovations, Inc. d/b/a Sonance and iPort:

1. Rob Roland
2. Pat McGaughan
3. Mike Sonntag
4. Derick Dahl

- (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (d) the court, court personnel, and court reporters and their staff;
- (e) independent litigation support services, including copy or imaging services retained by counsel to assist in the duplication of confidential material, graphics or design services, jury or trial consultant services, and the like, provided that counsel for the party retaining the service(s) instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;
- (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

1 (g) the author or recipient of a document containing the information
2 or a custodian or other person who otherwise possessed or knew
3 the information.

4 4.3 Officers, Directors and Employees of the Receiving Party, and Experts
5 and Consultants: The persons receiving “CONFIDENTIAL” information may not
6 disclose it to any other person, except in conformance with this Order. Each
7 individual who receives any “CONFIDENTIAL” information is subject to the
8 jurisdiction of this Court for the purpose of any proceedings relating to the
9 performance under, compliance with, or violation of this Protective Order.

10 Counsel who makes Confidential Material available to persons set forth in
11 Paragraphs 4.2(b)-(c) above shall be responsible for limiting distribution thereof to
12 only those persons authorized under this Protective Order. All copies of
13 Confidential Material disclosed shall be subject to the same restrictions imposed
14 herein on original materials.

15 4.4 Disclosure of “ATTORNEYS EYES’ ONLY” Information or Items.
16 Unless otherwise ordered by the court or permitted in writing by the designating
17 party, any document or information marked “Attorneys’ Eyes Only” shall not be
18 disclosed or made available to any persons, including parties to this litigation,
19 except the following:

- 20 (a) the receiving party’s counsel of record in this action, as well as
21 employees of counsel to whom it is reasonably necessary to
22 disclose the information for this litigation;
- 23 (b) experts and consultants to whom disclosure is reasonably
24 necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 26 (c) the court, court personnel, and court reporters and their staff;
- 27 (d) independent litigation support services, including copy or imaging
28 services retained by counsel to assist in the duplication of

Attorneys' Eyes Only material, graphics or design services, jury or trial consultant services, and the like, provided that counsel for the party retaining the copy or imaging service(s) instructs the service not to disclose any Attorneys' Eyes Only material to third parties and to immediately return all originals and copies of any Attorneys' Eyes Only material;

(e) the author or recipient of a document containing the Attorneys' Eyes Only information or a custodian or other person who otherwise possessed or knew the information.

4.5 Filing Confidential And Attorneys' Eyes Only Material. Before filing Confidential or Attorneys' Eyes Only material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the Confidential or Attorneys' Eyes Only designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Rule 79-5, et seq., sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or

1 that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or
2 delay the case development process or to impose unnecessary expenses and burdens
3 on other parties) expose the designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, disclosure or discovery material that qualifies for protection
10 under this Order must be clearly so designated before or when the material is
11 disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic
13 documents and deposition exhibits, but excluding transcripts of
14 depositions or other pretrial or trial proceedings), the designating
15 party must affix the word "CONFIDENTIAL" or
16 "ATTORNEYS' EYES ONLY" to each page that contains
17 Confidential material or Attorneys' Eyes Only material,
18 respectively. If only a portion or portions of the material on a
19 page qualifies for protection, the producing party also must
20 clearly identify the protected portion(s) (*e.g.*, by making
21 appropriate markings in the margins).

22 (b) Testimony given in deposition: the parties must identify on the
23 record, during the deposition, all protected testimony, without
24 prejudice to their right to so designate other testimony after
25 reviewing the transcript. Any party or non-party may, within
26 fifteen days after receiving a deposition transcript, designate
27 portions of the transcript, or exhibits thereto, as Confidential or
28 Attorneys' Eyes Only.

1 (c) Other information produced in some form other than documentary
2 and for other tangible items: the producing party must affix in a
3 prominent place on the exterior of the container or containers in
4 which the information or item is stored the word
5 “CONFIDENTIAL” or “ATTORNEYS’ EYES’ ONLY.” If only
6 a portion or portions of the information or item warrant
7 protection, the producing party, to the extent practicable, shall
8 identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the designating party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the receiving party must make reasonable
13 efforts to ensure that the material is treated in accordance with the provisions of this
14 Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a
17 designation of confidentiality at any time that is consistent with the existing
18 Scheduling Order.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any
20 dispute regarding confidential designations without court involvement. The
21 Challenging Party shall initiate the dispute resolution process under Local Rule 37-
22 1, et seq.

23 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via
24 a joint stipulation pursuant to Local Rule 37-2. The burden of persuasion in any
25 such motion shall be on the designating party. Frivolous challenges, and those made
26 for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
27 burdens on other parties) may expose the challenging party to sanctions. All parties
28

1 shall continue to maintain the material in question as confidential until the court
2 rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
4 IN OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this action as
7 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that party must:

8 (a) promptly notify the designating party in writing and include a copy
9 of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material
12 covered by the subpoena or order is subject to this Order. Such
13 notification shall include a copy of this Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the designating party whose Confidential material or
16 Attorneys’ Eyes Only material may be affected. Nothing in these
17 provisions should be construed as authorizing or encouraging a
18 receiving party to disobey a lawful directive from another court.

19 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
21 Confidential material or Attorneys’ Eyes Only material to any person or in any
22 circumstance not authorized under this Order, the receiving party must immediately

23 (a) notify in writing the designating party of the unauthorized disclosures, (b) use
24 its best efforts to retrieve all unauthorized copies of the protected material, (c)
25 inform the person or persons to whom unauthorized disclosures were made of all
26 the terms of this Order, and (d) request that such person or persons execute the
27 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
28 Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the receiving parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order or agreement that
8 provides for production without prior privilege review.

9 10. NON-TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each
11 receiving party must return all confidential material to the producing party,
12 including all copies, extracts and summaries thereof. Alternatively, the parties may
13 agree upon appropriate methods of destruction. Notwithstanding this provision,
14 counsel are entitled to retain one archival copy of all documents filed with the
15 court, trial, deposition, and hearing transcripts, correspondence, deposition and trial
16 exhibits, expert reports, attorney work product, and consultant and expert work
17 product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in
19 effect until a designating party agrees otherwise in writing or a court orders
20 otherwise. The parties agree that the terms of this Order shall survive and remain in
21 effect after the termination of the above-captioned matter.

22 This Order shall be binding upon the parties hereto, their attorneys, and their
23 successors, executors, personal representatives, administrators, heirs, legal
24 representatives, assigns, subsidiaries, divisions, employees, agents, retained experts,
25 and the persons or organizations over which they have direct control.

26 11. EXPERT DISCLOSURE

27 If any Receiving Party intends to disclose any Confidential material or
28 Attorneys' Eyes Only material to any person described in Paragraphs 4.2(c) or

1 4.4(b), the Receiving Party intending to disclose such Confidential or Attorneys'
2 Eyes Only material shall notify counsel for such Producing Party in writing, at least
3 ten (10) days before any such disclosure is made, of the identity of each such
4 person and if an employee, their job responsibilities. If the Receiving Party intends
5 to disclose any Confidential Material or Attorneys' Eyes Only material to a
6 potential or actual expert witness in this case, the Receiving Party shall include with
7 its notification to the Producing Party:

8 (a) The full name and professional address and/or affiliation of the
9 expert witness;

10 (b) A copy of the form annexed as Exhibit "A" executed by the expert
11 witness;

12 (c) An up-to-date curriculum vitae for the expert witness, including
13 education history;

14 (d) An identification of all previous or current relationships (personal
15 or professional) with any of the parties, including direct
16 relationships and relationships through entities owned or controlled
17 by the expert witness;

18 (e) A list of all other cases in which, during the previous 4 years, the
19 witness testified as an expert at trial or by deposition or prepared an
20 expert report

21 If the Producing Party objects to such disclosure of Confidential or
22 Attorneys' Eyes Only material, it shall notify the Receiving Party intending to
23 disclose the Confidential or Attorneys' Eyes Only material in writing of its
24 objection(s) prior to the date on which the disclosure is intended to be made.
25 Should the party intending to make the disclosure disagree with the basis for the
26 objection(s), such party must advise the objecting party in writing, with the reasons
27 for the party's position, after which the parties must comply with Local Rule 37-1,
28 et seq. to meet and confer regarding the dispute and, if no resolution is reached, to

1 present the dispute via a Local Rule 37-2, et seq. Joint Stipulation. The party
2 objecting to disclosure shall have the burden of proof by a preponderance of the
3 evidence on the issue of the sufficiency of the objection(s). Pending a ruling by the
4 Court upon any such objection(s), the Confidential or Attorneys' Eyes Only
5 material shall not be disclosed to any person objected to by such Producing Party.

6 12. THIRD PARTY CONFIDENTIAL INFORMATION

7 The parties agree to be bound by the terms of this Protective Order with
8 respect to any Third Party that produces confidential information in this lawsuit
9 provided that such Third Party agrees in writing to be bound by the terms of this
10 Protective Order. A party that seeks confidential information from a Third Party
11 shall provide with any subpoena or other governmental process directed to that
12 Third Party requesting such information a copy of this Protective Order and written
13 notice informing the Third Party that it may take advantage of the protections
14 afforded by this Protective Order. An inadvertent failure to provide a copy of this
15 Protective Order shall not constitute a breach of this provision.

16 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
17 inadvertent production of privileged material in this proceeding shall not, for the
18 purposes of this proceeding or any other federal or state proceeding, constitute a
19 waiver by the producing party of any privilege applicable to those material,
20 including the attorney-client privilege, attorney work-product protection, or any
21 other privilege or protection recognized by law, if the holder of the privilege took
22 reasonable steps to prevent the disclosure and promptly took reasonable steps to
23 rectify the error.

24
25 DATED: December 10, 2024


JOHN D. EARLY
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Protective Order that was issued
by the United States District Court for the Central District of California on
_____ [date] in the case of *National Products Inc. v. Dana Innovations, Inc. d/b/a Sonance and iPort*, Case No. 8:24-cv-02499-JWH-JDE. I agree to
comply with and to be bound by all the terms of this Protective Order. I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Protective Order, even if such enforcement proceedings occur after termination of
this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Executed this ____ day of _____, 20__, at _____.

QUALIFIED PERSON